IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO. 568 OF 2004

IN

SUIT NO.1878 OF 2000

...

Shri Sanjay Fatehpuria ...Plaintiff

v/s.

Shree Jitesh J. Shah ...Defendant

...

Mr.Sunil Pereira i/b Mr.M.L. Bansal for the Plaintiff.

Mr.P.G.Vora for Defendant in support of Notice of Motion.

...

CORAM: D.K.DESHMUKH, J.

DATED: 10TH FEBRUARY,2005

P.C.:

1. This Notice of Motion is liable to be dismissed for the casual attitude which is adopted by the Defendant in moving this Notice of Motion. Notice of Motion is for setting aside the exparte decree passed in a summary suit. Copy of the order whereby an exparte decree was passed is not produced on record. The learned Counsel for the Defendant stated that he has not even seen that order. Perusal of that order which is available on record shows that the exparte decree was passed because leave to defend which was sought by the Defendant was declined. An order passed by the Court refusing to grant leave to defend is also not produced. Again the learned Counsel for the Defendant states that he has not seen that order.

2. In my opinion, entertaining the Notice of Motion at the instance of such litigant would amount to abusing the process of the court and would also amount to encouraging such casual attitude by the litigant. Therefore, in my opinion, not only this Notice of Motion is liable to be rejected, but the

Defendant should be made to pay heavy costs for approaching the court in such casual manner. The Notice of Motion is, therefore, disposed of. The Defendant is directed to pay Rs.5000/- as costs of this Notice of Motion.

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